

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-209047

DATE: October 20, 1982

MATTER OF: RAD Oil Company, Inc.

## DIGEST:

1. Bid offering standard commercial payment terms, different from those specified in the solicitation, was properly rejected as nonresponsive, since such an offer affects price and therefore constitutes a material deviation.
2. Bidder's offer to modify its bid after opening was properly rejected. Acceptance would be contrary to maintaining the integrity of the competitive bidding system, even though a possibility exists that the Government might realize a monetary savings from the modification.
3. Where protester's initial submission clearly shows protest is without legal merit, GAO will neither request agency report nor hold requested conference, since no useful purpose would be served.

RAD Oil Company, Inc. protests the rejection of its bid under the Defense Logistics Agency's invitation for bids No. DLA 600-82-B-0002 for the supply of gasoline to the Defense Fuel Supply Center. The DLA rejected the bid as nonresponsive to the 30 day credit terms specifically required by the solicitation.

RAD argues that its resulting net price--after accounting for the difference between RAD's proposed 30 day credit terms and those in the solicitation--is lower on 22 of 25 items than those submitted by other bidders, and therefore its bid is most advantageous to the Government. RAD also requests a conference with respect to its protest. We deny the protest.

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The solicitation included clause C4.02 pertaining to net and prompt payment terms, specifically stating that Government payment terms are "net 30 days." It stated that the contract would be "awarded to that responsible offeror conforming to the solicitation."

Although RAD initially was thought to be the successful bidder for a total of 1,393,200 gallons of gasoline, and a pre-award survey was performed, DLA subsequently discovered that RAD's bid included its standard commercial payment terms, "net 20 days." When RAD was verbally notified of its impending rejection on this basis, it advised the Defense Fuel Supply Center it would waive its normal payment terms and comply with those in the solicitation. The agency refused to allow the waiver and denied RAD's protest regarding its rejection.

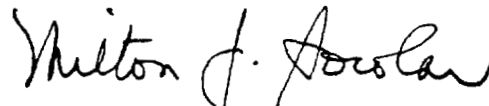
In order to be responsive, a bid must contain an unequivocal offer to provide the requested items in total conformance with the material terms of the solicitation, and any bid which does not conform is not responsive and must be rejected. Our Office has defined a material deviation as one which affects the price, quality, or quantity of goods or services offered. Fluke Trendar Corporation, B-196071, March 13, 1980, 80-1 CPD 196; Searle CT Systems, B-191307, June 13, 1978, 78-1 CPD 433. RAD's incorporation of the 20-day payment term clearly affected price, as RAD would require payment 10 days sooner than any other bidder. RAD therefore submitted a bid which deviated materially from the solicitation, and the agency properly declared it nonresponsive. Fluke Trendar Corporation, supra. To permit RAD to change its payment terms after opening would be contrary to the principle that bids may not be altered after opening to make them acceptable and would subvert the competitive bidding system by giving the firm "two bites at the apple." Fluke Trendar Corporation, supra.

RAD alleges its bid would result in a monetary savings to the Government. However, we have often held that the importance of maintaining the integrity of the competitive bidding system outweighs the possibility that the Government might realize a monetary savings in a particular procurement if a material deficiency is corrected or waived. Marino Construction Co., Inc., B-204970, February 25, 1982, 82-1 CPD 167; Jose Lopez & Sons Wholesale Fumigators, Inc.,

B-200849, February 12, 1981, 81-1 CPD 97. Therefore RAD's offer to modify its bid after opening also was properly rejected.

RAD has requested a conference. However, it is clear from RAD's initial submission that this protest is without merit. Therefore, we are deciding the matter without obtaining an agency report and without the conference, as they would serve no useful purpose. Empire Electric Co., Inc., B-204911.2, November 3, 1981, 81-2 CPD 379; The Brunton Company, B-192243, August 29, 1978, 78-2 CPD 151.

The protest is summarily denied.

A handwritten signature in cursive script, reading "Milton J. Fowler".

Acting Comptroller General  
of the United States